

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Dwayne Bernard Terry,)	C/A No.: 1:10-2217-MBS-SVH
)	
Plaintiff,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
WT Johnson, Captain Mullins, and Ken)	
Williams,)	
)	
Defendants.)	
_____)	

Plaintiff, proceeding *pro se* and *in forma pauperis*, brought this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. Defendants filed a motion for summary judgment on March 2, 2011. [Entry #23]. As Plaintiff is proceeding *pro se*, the court entered an order on March 3, 2011, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising him of the importance of a motion for summary judgment and of the need for him to file an adequate response. [Entry #24]. Plaintiff was specifically advised that if he failed to respond adequately, Defendants' motion may be granted, thereby ending this case. Notwithstanding the specific warning and instructions set forth in the court's *Roseboro* order, Plaintiff has failed to respond to the motion.

By order dated September 16, 2011, the court again ordered Plaintiff to advise the court as to whether he wishes to continue with this case and to file a response to Defendants' motion for summary judgment by September 30, 2011. [Entry #30]. The court further advised Plaintiff that if he failed to respond, this action will be recommended for dismissal with prejudice for failure to prosecute. The September 16,

2011 order was returned to the Clerk of Court's office via United States Postal Service on September 21, 2011, with a handwritten notation indicating Plaintiff had been released from custody of the Marion County Detention Center [Entry #30]. Plaintiff was previously directed by order of this court to keep the court apprised of any change in address:

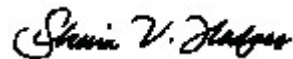
You are ordered to always keep the Clerk of Court advised **in writing** (**Post Office Box 2317, Florence, South Carolina 29503**) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this Order, you fail to meet a deadline set by this Court, **your case may be dismissed for violating this Order.** Therefore, if you have a change of address before this case is ended, you must comply with this Order by immediately advising the Clerk of Court in writing of such change of address and providing the Court with the docket number of all pending cases you have filed with this Court. Your failure to do so will not be excused by the Court. Put this Order with your own record of this case so that you will not overlook your duty. If your address changes in the future, you must provide the Court with your *own* new address.

[Entry #7] (emphasis in original). Plaintiff has failed to comply with this order, and as a result, neither the court nor the Defendants have any means of contacting him concerning his case. No response has been filed by Plaintiff to Defendants' motion for summary judgment.

Based on the foregoing, and the previous instructions and specific warning given to Plaintiff in the court's prior orders, it is recommended that this action be dismissed with prejudice, in accordance with Fed. R. Civ. P. 41(b). The Clerk is directed to send this Report and Recommendation to Plaintiff at his last known address.

If Plaintiff notifies the court within the time set for filing objections to this Report and Recommendation that he wishes to continue with this case and provides a current address, the Clerk is directed to vacate this Report and Recommendation and return this file to the undersigned for further handling. If, however, no objections are filed, the Clerk shall forward this Report and Recommendation to the district judge for disposition.

IT IS SO RECOMMENDED.



September 21, 2011
Florence, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**